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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/042,985   | 10/19/2001  | John H. Schneider    | ITW-13111               | 5951             |
| 7590   | 03/14/2006  |                      | EXAMINER                |                  |
| DENNIS M. FLSHERTY, ESQ.<br>OSTRAGER CHONG FAHERTY & BROITMAN P. C.<br>250 PARK AVENUE<br>SUITE 825<br>NEW YORK, NY 10177-0899 |             |                      | TRUONG, THANH K         |                  |
|  |             |                      | ART UNIT                | PAPER NUMBER     |
|  |             |                      | 3721                    |                  |
|  |             |                      | DATE MAILED: 03/14/2006 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/042,985             | SCHNEIDER ET AL.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Thanh K. Truong        | 3721                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3,7-12 and 58-65 is/are pending in the application.
  - 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3,7-11 and 58-65 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on January 5, 2006.
2. Applicant's cancellation of claims 1, 2, 4-6, and 13-57 is acknowledged.
3. Claim 12 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable genetic or linking claim. Election was made **without** traverse in Paper No. 7.

Therefore the currently amended claim 12 should be withdrawn, and will not be examined in this office action.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3, 7-11 and 58-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation: "a first line of weakness having a straight portion parallel to said zipper when said zipper is straight and extending across said header at a third elevation that is lower than said second elevation" in claim 58, lines 14-17, is vague and indefinite, because it is unclear which one is at a third elevation, a first line of weakness or the zipper?

Similarly, the recitation, in lines 15-18 of claim 63, is vague and indefinite for the same reason.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 7-11 and 58-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513) in view of H. J. Keller (3,255,869) or Deutschländer (4,147,583) or Kopp et al. (5,371,997).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper (20) attached to the mouth and comprising first and second fastener strips; a slider (20a) movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips, the slider having a top at a first elevation and a bottom at a second elevation lower than the first elevation; and a header (11) enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches (24) formed therein, the first tear notch comprising a termination point disposed at an elevation that is higher than the first elevation, header comprising the line of weakness (12) having a straight portion extending across the header at an elevation

that is lower than a second elevation (figure 5), the first wall of the header further comprising a first line of weakness (13) traversing a range of elevations encompassing the first and second elevation (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10);

Strand discloses the claimed invention, but does not expressly disclose that the line of weakness (13) is a slit.

Keller ('869) discloses a receptacle (10) comprising the series of the slits (14) (line of weakness or line of perforation across the top of the receptacle) to provide means to help the consumers to easily remove the top portion of the receptacle (column 2, lines 57-63).

Deutschländer ('583) discloses slit (24, 24') on a receptacle (11) to facilitate the tearing-open of the transverse seam (column 1, lines 33-34).

Kopp ('997) discloses slit (9, 9', 29, 39) on packaging bag (1) providing a tear-open slit for aiding in initiating the tearing of the package (column 1, lines 17-19).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish the claimed invention over the prior applied art.

Furthermore, the lines of weakness (13) comprises a point located both laterally and elevationally near the termination point of the first tear notch.

Strand further discloses: the lower point of the first lines of weakness (13) being further away from the closest one of the first and second side edges than is the upper point of the first lines of weakness (13); the first and second lines of weakness (12) and the first and second lines of weakness (13) are overlapping; and wherein the first line of weakness is a scoreline (column 3, lines 41-43).

#### ***Response to Arguments***

8. Applicant's arguments filed August 15, 2005 have been fully considered but they are not persuasive.
9. In response to the Applicant's argument that:

*"The Examiner concedes that Strand does not teach such a slit, but asserts that each of the three secondary references separately suggests that a slit could be substituted for the line of weakness 13 disclosed in Strand. The Applicants respectfully submit that this logic is unsupportable",*

the examiner respectfully disagrees for the following reasons:

The examiner maintains that a line of weakness may include, among others, structures such as perforation, scores, microperforations, or slit. This teaching is expressly disclosed in the references of Strand et al., H. J. Keller, Deutschländer and Kopp et al., and it is mentioned over and over in many of the examiner's office actions. To further emphasizes this point, the examiner directs the Applicant's attention to the following supportive documents:

The Applicant's disclosure (page 8, lines 19-31 and page 9, lines 1-2) clearly pointed out that:

*"As seen in FIG. 1, the slits 20 are inclined ... Alternatively, lines of weakness may be employed in place of slits, provided that such lines of weakness yield easily when the consumer tries to tear the header open, ... Again, such a line of weakness may comprise a line of spaced slits, a line of spaced perforations, a continuous or discontinuous score-line of thinned header material, a continuous or discontinuous line of pre-weakened header material, or any equivalent structure for providing a line of preferential tearing"* (emphases added).

The examiner by no means using the Applicant's disclosure as prior art, but only to point out that Strand's reference has previously been disclosed the very same idea that a line of weakness may include any line that is intentionally designed to be easily torn by the user:

*"The term structural weakness is generally used to describe that area of the reclosable bag that is intentionally designed to be easily torn by the consumer ... the term structural weakness should include, without limiting its meaning, structures such as perforation, scores, microperforations, and multiple laminate materials which include a layer having an area of material or materials which are specifically designed to be easily torn."* [Strand, column 3, lines 36-50; emphases added.]

Moreover, Keller ('869), Deutschländer ('583) and Kopp ('997) all teach that a slit is intentionally designed to be easily torn by the consumer, and to assist and to facilitate a

manual tearing-opening of a header of a bag. Accordingly, the use of the slit as a line of weakness is old and well known in the art and thus is deemed to be a design choice.

10. In response to the Applicant's arguments that none of the secondary references teach or suggest substituting a single slit for the substantially diagonal arcuate section 13 of Strand, the examiner respectfully disagrees.

Again, the secondary references of Keller ('869), Deutschländer ('583) and Kopp ('997) are relied upon for the teaching that slit is intentionally designed to be easily torn by the consumer, and to assist and to facilitate a manual tearing-opening of a header of a bag.

Strand discloses the claimed invention, and among other things, a second line of weakness 13, but not in the form of a slit, and the examiner's contention is in two folds:

- It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line of weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

- Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish the claimed invention over the prior applied art.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

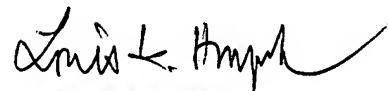
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkt

March 8, 2006.



LOUIS K. HUYNH  
PRIMARY EXAMINER